

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

TOWN NORTH BANK, N.A.,

Plaintiff,

v.

SHAY FINANCIAL SERVICES INC., UBS
FINANCIAL SERVICES, INC., MORGAN
STANLEY & CO. LLC, MERRILL LYNCH
& CO. INC., J.P. MORGAN SECURITIES
LLC, successor in interest to BEAR
STEARNS & CO., INC.,

Defendants.

CIVIL ACTION NO. 3:11-CV-3125-L

**DEFENDANT SHAY FINANCIAL SERVICES, INC.'S
NOTICE OF WITHDRAWAL OF EXHIBIT F
TO REQUEST FOR JUDICIAL NOTICE**

COMES NOW, Shay Financial Services, Inc. (“Defendant”) and respectfully files this Notice of Withdrawal of Exhibit F, which was filed with its Request for Judicial Notice.

On February 10, 2012, Defendant filed a Request for Judicial Notice asking the Court to take judicial notice of, *inter alia*, a print-out from the FINRA website regarding Merrill, Lynch, Pierce, Fenner & Smith, a broker-dealer registered with FINRA. (*See* Exhibit F to Request for Judicial Notice) Plaintiff Town North Bank, N.A. has not named Merrill, Lynch, Pierce, Fenner & Smith as a defendant, but instead named Merrill Lynch & Co., which was a holding company before it was acquired by Bank of America in 2008.¹

¹ Because Town North’s Complaint alleges that Defendant Merrill Lynch & Co. was an “issuer, underwriter and broker,” it appears that Town North has named the wrong Merrill Lynch entity as a defendant.

For this reason, Defendant withdraws its request that the Court take judicial notice of Exhibit F to the Request for Judicial Notice. Defendant relies upon Town North Bank, N.A.'s Complaint (¶¶ 49-58) which claims that Merrill Lynch & Co. was a broker. As such, it did not owe fiduciary duties to Town North Bank, N.A.

Respectfully submitted

s/ Mark R. McDonald

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**ATTORNEYS FOR DEFENDANT
SHAY FINANCIAL SERVICES, INC.**

CERTIFICATE OF SERVICE

I hereby certify that on February 22, 2012, a true and correct copy of the foregoing was filed via the Court's CM/ECF system which will send notification of such filings(s) to all counsel of record consenting to electronic service.

s/ Mark R. McDonald

Mark R. McDonald